



IOWA HOUSE DEMOCRATS

BILL SUMMARY

Franchisor/Franchisee HF 327

Status of Bill: House Floor

Committee: Commerce (13-10)

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Lead Democrat: Rep. Forbes

Floor Manager: Rep. Wills

Background

HF 327 is a recycled bill (HF 2337) that passed 14-9 in Commerce Committee during last session. However, HF 2337 was never brought forward for a floor debate or vote. Representative McConkey was our member on the bill.

Federal Law

In 2015, under *Browning –Ferris*, the National Labor Relations Board (NLRB) ruled that franchisors are closer to traditional employers for purposes of federal labor laws (minimum wage, private sector collective bargaining rights, ACA small business healthcare, etc.). Additionally, this case defined 'joint employment' as a company exercising any control over working conditions or reserving the authority to do so – which potentially puts franchising headquarters on the hook (liability wise) for working conditions/labor laws IN ADDITION TO the individual franchisee.

The NLRB tried to overturn this rule in 2017 under the new Administration, ruling that the term was NOT applicable to the franchisor-franchisee relationship and thus franchisors would not be serially sanctioned and sued for franchisee's alleged labor-rule infractions. However, the NLRB had to vacate the matter in February 2017 due to a NLRB voting member's conflict of interest on the matter.

During 2018, McDonald's was forced to settle a US Labor board case in order avoid NLRB ruling that they are considered a 'joint employer' of workers at McDonald's franchises and thus liable when franchisees violate federal labor laws. A Union-backed worker advocacy group filed dozens of legal claims on behalf of McDonald's employees alleging cause for termination was participating in protests advocating for higher wages. A ruling against McDonald's would have potentially upended franchising models by making franchisors (like McDonald's) vulnerable to lawsuits and requiring their entities to bargain with unions representing franchise workers.

State Law

There is no current default under Iowa Code, so HF 327 would establish a new approach. While contractual agreements may attempt to govern the relationship, a contract that inadvertently misclassifies a person (or franchisee) as an independent contractor even though they are being treated as an employee would not hold up if challenged. Ultimately, a person CANNOT waive their employee rights when signing a contract that deems him/her an independent contractor if reality does not bear out that classification.

The question of liability for employment laws (minimum wage, employment security, Civil Rights, paid leave, collective bargaining, etc.) generally turns on the person's classification (employee vs. independent contractor), which is NOT currently governed by a particular federal or state statute.

Distinction between independent contractor and employees is governed by common law and case law that entails multi-factor analysis. In this context, the question would be the degree of control the franchisor exercises over the franchisee, which causes some businesses to use franchise relationships as a mechanism to lessen liability under various labor laws. Franchise contracts may explicitly specify this, but under current law, a contract would not hold up if the franchisee is being treated in practice like an employee.

Bill Summary

HF 327 states that a franchisor would not be considered a joint-employer with a franchisee, unless two conditions are met:

1. The franchisor has agreed, in writing, to be considered the employer or the employee of the franchisee; and
2. The governing state agency found the franchisor exercising control over the franchisee or the franchisee's employees that is outside the scope of control normally exercised by the franchisor when protecting trademark's brand.

If neither element applies, the franchisor would be considered exempt (not liable) for the franchisee's actions under the following Code sections:

1. *Workers Compensation* (Ch. 85): This chapter regulates workers compensation, injury compensation, vocational rehabilitation, and benefit claims.
2. *Wage Payment Collection* (Ch.91A): This regulates Iowa employer's wages and health plans for employees. 'Wages' is defined as an employer owing compensation for employee's labor/services, including vacation, holiday, sick leave or severance due to an employee ; any payments to the employee or to a fund that benefits the employee (including: medical health, hospital, welfare, pension, etc.) ; expenses incurred; and funds recoverable under health plan.
3. *Minimum Wage Requirements* (Ch. 91D.1): This requires employers to pay all employees a set minimum wage.
4. *Unemployment Compensation* (Ch. 96): This provides Iowa employees with employment security/unemployment compensation through regulation of back pay, unemployment benefits, employer contributions/reimbursements, appropriations for workforce development field offices, reciprocal benefit arrangements, voluntary shared work programs, etc.
5. *Civil Rights Commission* (Ch. 216): This chapter protects Iowa employees from unfair employment practices, employment discrimination (race, gender, disability, etc.), housing discrimination, and involuntary retirement. This section also provides employees with due process in the event a complaint is made regarding discrimination.

Most labor groups and organizations are registered 'opposed' to HF 327 for the above concerns.

Committee Amendment

The Committee passed HF 327 as amended, which replaced all 'franchisee/franchisor' federal definitions (16 C.F.R. section 436.1) with the Iowa Code definition under 523H.1.

IOWA LAW

Per 523H.1 (5), "franchisee" means a person to whom a franchise is granted, and includes the following:

- a. A subfranchisor with regard to its relationship with a franchisor.

b. A subfranchisee with regard to its relationship with a subfranchisor.

523H.1 (6) defines "Franchisor" as a person who grants a franchise or master franchise, or an affiliate of such a person. Franchisor includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in 523H.1.

FEDERAL LAW

16 C.R.F. section 4361 defines franchisor/franchisee as the following:

(h) "Franchise" means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that:

- (1) The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark;
- (2) The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and
- (3) As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.

(i) "Franchisee" means any person who is granted a franchise.

Ver Schuer, Alison [LEGIS] | G:\Caucus Staff\AVS\Commerce\2019 Session\HSB 5 - Franchsior Franchisee.docx | February 8, 2019 | 10:44 AM